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8 IN THE UNITED STATES BANKRUPTCY COURT
9 IN AND FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

10 In Re:

11 SHIRLEY ATKINS,

Debtor.

No. 05-46578

12 MICHAEL D. HITT, Chapter 7 Trustee for
13 the bankruptcy estate of Shirley Atkins,

Plaintiff,

v.

15 KYLE R. WICHERN and "JANE DOE"
16 WICHERN, individually and as husband and
17 wife; and MATTHEW J. RHEA and "JANE
18 DOE" RHEA, individually and as husband
and wife,

Defendants.

Adversary No.

COMPLAINT TO AVOID TRANSFER

19 COMES NOW Michael D. Hitt, Plaintiff or Trustee, by and through his attorneys
20 Eisenhower & Carlson, PLLC and Terrence J. Donahue, and for causes of action against
21 Defendants, asserts and alleges as follows:

22 I.

23 This Court has jurisdiction over this matter pursuant o 28 U.S.C. § 157, and this
24 matter is a core proceeding.

25 II.

26 On or about July 20, 2005, Shirley Atkins ("Debtor") filed her Chapter 7 bankruptcy

1 proceeding in the United States Bankruptcy Court for the Western District of Washington at
2 Tacoma, Case No. 05-46578 ("Bankruptcy Proceeding").

3 **III.**

4 Plaintiff is the duly appointed and acting Chapter 7 Trustee for the bankruptcy estate
5 of Shirley Atkins in the above-referenced Bankruptcy Proceeding.

6 **IV.**

7 On information and belief, Defendant Kyle R. Wichern is a resident of Pierce County,
8 Washington, and Kyle R. Wichern and "Jane Doe" Wichern ("Defendant Wichern") form a
9 marital community under the laws of the state of Washington. All acts alleged of either
10 Defendant were done on their own individual behalf and behalf of their marital community.

11 **V.**

12 On information and belief, Defendant Matthew J. Rhea is a resident of Pierce County,
13 Washington, and Matthew J. Rhea and "Jane Doe" Rhea ("Defendant Rhea") form a marital
14 community under the laws of the state of Washington. All acts alleged of either Defendant
15 were done on their own individual behalf and behalf of their marital community.

16 **FIRST CAUSE OF ACTION**

17 **VI.**

18 The allegations contained in Paragraphs I through V are realleged and incorporated
19 herein by this reference.

20 **VII.**

21 In or around May 7, 2005, Defendant Wichern and Defendant Rhea entered into a
22 Residential Real Estate Purchase and Sale Agreement Specific Terms with addendum thereto
23 for the purchase of property located at 4315 S. Sheridan Avenue, Tacoma, Washington from
24 Debtor ("PSA"). The PSA provides for a purchase price of \$200,000.00 and further included
25 a residential lease with option to purchase, which allowed Debtor to lease the property from
26 said Defendants upon their purchase, with an option to essentially repurchase the property for
the payoff of the then current mortgage note at the end of the twelfth month thereafter.

1 **VIII.**

2 Closing statements concerning the sale, as provided for by the PSA, indicate that the
3 purchase price was changed to \$162,000.00. At closing, it appears that Debtor's underlying
4 mortgage was paid, and two new mortgages were placed on the property for \$129,600.00 and
5 \$31,817.68, representing loans by Defendants to purchase the subject property. Upon paying
6 closing costs, Debtor was to receive cash of approximately \$24,808.76.

7 **IX.**

8 The net sale proceeds of \$24,808.76 were evidenced by a check, which was cashed
9 and three cashier's checks were issued therefore, one to each named Defendant for
10 \$10,154.38, and one to Joyce Mosley for \$3,000.00.

11 **X.**

12 Upon Trustee's investigation, Trustee can find no basis for the funds paid to each
13 Defendant in excess of \$10,000.00 each.

14 **XI.**

15 The transfers from Debtor to Defendants in the amount of \$10,154.38 each represents
16 a transfer that was made on or within one year before the date of filing of the Bankruptcy
17 Proceeding, for which Debtor received less than the reasonably equivalent value in exchange
18 therefore, while Debtor was insolvent and/or while she was presumed to be insolvent, and
19 constitutes a fraudulent conveyance pursuant to 11 U.S.C. §548 *et seq.* and/or RCW 19.40 *et*
20 *seq.*, which is subject to avoidance and/or entitles Trustee to recover for the benefit of the
estate the value of such property transferred in an amount to be proven at trial.

21 **WHEREFORE**, Plaintiff prays for the following relief:

- 22 1. For determination that Debtor's transfer of \$10,154.38 to Defendant Wichern
23 and to Defendant Rhea is subject to avoidance pursuant to 11 U.S.C. § 548 *et seq.* and/or
24 RCW 19.40 *et seq.* and/or the Trustee is entitled to recover the value of the property
25 conveyed and for judgment against said Defendant in an amount to be proven at trial;
26 2. For Plaintiff's attorneys' fees and costs in pursuing this matter;

3. For interest accruing on the amount awarded herein from the date of the transfers forward; and

4. For such other and further relief as the Court deems just and proper in the premises.

DATED this 13th day of April, 2006.

EISENHOWER & CARLSON, PLLC

By: /s/ Terrence J. Donahue
Terrence J. Donahue, WSBA #15193
Attorneys for Plaintiff